

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

03 DEC -9 AM 8:52
U.S. DISTRICT COURT
N.D. OF ALABAMA

STEPHEN McDOWELL,

]

]

Plaintiff(s),

]

]

vs.

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CV02-CO-02753-S

]

LIBERTY MUTUAL INSURANCE COMPANY,

]

Defendant(s).

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ENTERED

DEC 10 2003

MEMORANDUM OF OPINION

The court has reviewed the defendant's motion for summary judgment and accompanying evidence. The defendant has submitted evidence showing that its decision to deny plaintiff's claim for long-term disability insurance benefits based on the pre-existing condition clause of the policy was not arbitrary and capricious and has argued the plaintiff's state law fraud claim is pre-empted by ERISA. Although plaintiff has been afforded two opportunities to respond to the motion, no response has been forthcoming. [Doc. 3, 12]. Accordingly, the evidence is unrebutted. There being no dispute of material fact, the motion is due to be granted. A separate order will be entered.

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Done, this 8 of December, 2003.



L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE